

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Plaintiff,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION, et al.,

Defendants.

Case No. 2:12-cv-00665-KJD-PAL

ORDER

(Mot. To Seal - Dkt. #109)


Before the court is Defendants Motion for Leave to File Under Seal the Federal Deposit Insurance Corporation as Receiver for Silver State Bank's Supplemental Briefing Regarding Pending Discovery (Dkt. #109). The motion seeks to seal the Supplemental Briefing (Dkt. #108) which contains and refers to exhibits, and exhibits 6, 7 & 8 which Progressive has designated "confidential" pursuant to the Confidentiality Agreement and Protective Order entered in this case. The motion does not comply with the requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) in requesting to seal the exhibits. The FDIC filed the motion to comply with its obligations under the Confidentiality Agreement and Protective Order (Dkt #77). The court approved the agreement and protective order to facilitate the parties' discovery exchanges without making a finding that any particular documents were actually confidential or otherwise protected from public disclosure. The court entered a separate order (Dkt #78) directing the parties to comply with LR10-5(b) and *Kamakana* in any application to file materials under seal.

As the party designating the documents as "confidential" Progressive is the party which has the burden of establishing that the exhibits are secret or confidential. Because the documents are attached and referred to in a non-dispositive filing Progressive must show and that good cause exists to keep

1 them filed under seal by providing specific facts supported by affidavits or concrete examples to
2 establish they are trade secret or other confidential information entitled to protection under Rule 26(c)
3 or that disclosure would cause an identifiable and significant harm. *See Kamakana*, 447 F. 3d at 1179.

4 **IT IS ORDERED** that Progressive shall have until **November 1, 2013**, in which to file a
5 memorandum complying with the requirements of *Kamakana*. Pursuant to LR 10-5(b) the
6 Supplemental Briefing (Dkt. #108) shall remain sealed until further order of the court.

7 Dated this 18th day of October, 2013.

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10 Peggy A. Leen
United States Magistrate Judge
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